



**Department of Land and Natural Resources
Hawaii State Aha Moku
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Hawaii State Aha Moku

Before the Senate Committee on Ways and Means

Thursday, March 3, 2022
10:10 a.m.

State Capitol, Conference Room 211 & Videoconference

**IN SUPPORT OF
SENATE BILL 3103
Relating to Historic Preservation Reviews and offers comments.**

Senate Bill 3103 relates to historic preservation reviews and allows the Department of Hawaiian Home Lands (DHHL) to assume historic preservation review of the effect of any proposed project for lands under its jurisdiction except for projects affecting properties listed or nominated for inclusion in the Hawaii register of historic places or the national register of historic places.

The Hawaii State Aha Moku (Aha Moku) supports this measure and offers comments.

Where we appreciate the intent of this bill that deals with historic properties on DHHL lands, we believe the interpretation of historic properties is anything that is over 50 years old. The measure complies with Section 6E-8, HRS as it calls for a fully qualified historic preservation professional. However, the bill is silent on what are the minimum qualifications for the position. We believe this is critically important and should be detailed in the bill.

While we fully support DHHL and its beneficiaries, the very nature of Hawaiian Homes is that native Hawaiians are awarded lands based on a chronological waiting list. Those beneficiaries who receive lots do not necessarily come from the lands that are awarded and therefore do not know the specific natural and cultural resources of the specific place they then live on. Oftentimes, their wants and needs conflict with the wants and needs of generational families of the same site. We believe that the proposed historic preservation professional, in addition to having the knowledge of at least archaeology, history, historic architecture or architectural history must also know or learn the traditional usage of the site and take steps to protect culturally significant areas if they exist on proposed and/or existing DHHL lands.

Thank you for the opportunity to comment on Senate Bill 3103.

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HISTORIC HAWAII FOUNDATION

TO: Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means (WAM)

FROM: Kiersten Faulkner, Executive Director
Historic Hawai'i Foundation

Committee: Thursday, March 3, 2022
10:10 a.m.
Via Video Conference/Conference Room 211

RE: SB 3103, Relating to Historic Preservation Reviews

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to SB 3103**. The bill would amend Hawai'i Revised Statutes §6E to allow the Department of Hawaiian Homelands (DHHL) to assume the historic preservation and burial treatment reviews under HRS §6E-8, eliminating the role of the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources in determining and resolving potential effects of the projects upon historic properties, cultural resources and iwi kūpuna.

State law (HRS §6E-8), currently requires that prior to any state, county or public project commencing, that the proposed project shall be referred to SHPD for its review of the proposed project's potential effect on historic properties, aviation artifacts, or burial sites, especially those listed on the state register of historic places. The proposed project shall not commence until the department gives its written concurrence.

SHPD's review of proposed projects is an important safeguard to ensure that historic properties and cultural resources are identified and appropriate treatment measures are in place during planning and design work, which also then limits surprises or delays during construction.

The Department of Hawaiian Homelands does not have qualified staff, subject matter expertise, an appropriate administrative framework or other capacity to conduct these reviews or to resolve effects that projects may have on historic properties. The bill does not require such expertise or administrative support, nor decision-making in accordance with preservation standards and best practices, thus leaving the program subject to capricious decisions at the whim of the department.

Furthermore, such a review process would essentially be self-dealing and have inescapable conflicts of interest. HHF is very concerned that DHHL would not prioritize and take actions to protect and preserve cultural sites, burials and historic properties affected by its actions, but rather would wave away those effects in self-interest to pursue its development aims.

The bill does not include any safeguards to ensure professional judgment, eliminate conflicts and ensure ethical decision-making. It is unwise to allow for any regulated entity to self-enforce, as the temptation to make pretextual determinations at the expense of historic and cultural preservation outcomes may be too tempting for the self-regulated entity to overcome.

HHF also notes that DHHL projects are often subject to Federal historic preservation regulations, especially in the case in which federal funds are used to leverage housing development and/or infrastructure.

In those cases, Section 106 of the National Historic Preservation Act applies. The Code of Federal Regulations (36 CFR Part 800) governs issues related to historic preservation and includes specific roles and responsibilities for the State Historic Preservation Officer (SHPO). While the technical reviews may be delegated to qualified preservation professionals in the fields of architecture, architectural history or archaeology, the SHPO is ultimately responsible for the authorization and approval of the Section 106 process and resolution of potential effects on historic properties.

SHPD professional staff are versed in these and other differences and are able to ensure that review and compliance procedures address them. If a double-review with DHHL's in-house personnel were introduced, the Federal and State review processes would be segregated, adding conflict, confusion and contradiction.

For these reasons, **Historic Hawai'i Foundation respectfully asks the committee to hold the bill and not pass it on further.** Thank you for the opportunity to comment.